IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4974 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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DARUSING DURGASING - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BB NAIK for Applicant(s) : 1,
MR HL JANI, APP for Respondent(s) : 1,
PARTY-IN-PERSON for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 06/10/2005

ORAL JUDGMENT

1.The petitioner – original accused has filed this petition under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the summons issued in Criminal Case No.435/1999 in the Court of learned Metropolitan Magistrate at Ahmedabad.

2.Mr. B.B. Naik, learned advocate with Mr. D.S. Vasavda, learned advocate for the petitioner has submitted that the respondent No.2, namely, Prakash Kanubhai Shah, who is appearing as party in person has filed criminal complaint being Criminal Case No.435/1999 for the offences punishable under Section 500 of the I.P.C. He has submitted that the respondent No.2 filed Company Application No.364/1998 and in the said application various allegations

were levelled against the Official Liquidator as well as the office bearers of the Textile Labour Association (T.L.A.). In response to the notice issued by the Court in the said application, the present petitioner has filed affidavit in reply. In para 2 of the said affidavit-in-reply, it is stated that the Company Application has been filed by the petitioner (present Respondent No. 2) with a malafide intention to harass the other workers of the Bharat Suryodaya Mills Ltd. to delay the sale so that the unrest amongst the workers is created so as to disturb the peace. It is further stated that this is nothing but an attempt to blackmail to all parties and create a nuisance value. The Court is requested to take note of this fact very seriously because Mr. Prakash Shah (present Respondent No. 2) is trying to act contrary to the orders passed by the Court. In para-6 of the affidavit-in-reply,

the petitioner has highlighted the misdeeds committed by the present respondent No.2. In the last paragraph of the affidavit in reply, it was stated by the present petitioner that the Court should not encourage such frivolous application because the respondent No.2 has formed a habit of filing such frivolous applications.

3.Mr. Naik has further submitted that this Court has passed an order in the said application on 02.12.1998 and the said application was rejected. While rejecting the said application, this Court has observed that the alleged discrepancy with respect to nine machines did not exist. In respect of the allegation that some 275 machines were not valued, the present respondent No. 2 was called upon to show as to which those machineries were, but he could not identify them. The

Court, therefore, took the view that nothing could be done in the said application and it was accordingly rejected.

4.Mr. Naik further submitted that the Respondent No. 2, thereafter, filed another application being Company Application No. 417 of 1998 before this Court. However, in the said application it was contended on behalf of the respondent No.2 that the respondent No.2 wanted to file a criminal complaint against the present petitioner and he made a specific reference of para-6 of the affidavit in reply filed in Company Application No.364/1998. While disposing of the said application on 09.12.1998, the Court has observed that the present respondent No.2 need not worry about the statement made in the affidavit in reply. The application was accordingly disposed off and Court has not thought it fit to interfere

in the said application. After disposing of the said application the respondent No.2 has issued notice and filed criminal complaint. Mr. Naik has further submitted that the averments and allegations made by the petitioner in the affidavit in reply filed before this Court are part and parcel of the legal proceedings and considering the same, the Court rejected the application. It would not amount to defamation as contended by the respondent No.2. He has further submitted that the said proceedings have been instituted by the respondent No.2 with malafide intention to harass the petitioner and all other workers of the Mills Company. He has further submitted that several orders have been passed by this Court against the respondent No.2. The respondent No.2 was restrained from entering the premises of Bharat Suryodaya Mill Ltd. [company in liquidation], vide order dated 18.06.1998 passed by the

Division Bench of this Court in C.A. No. 108 of 1998 in O.J. Appeal No. 37 of 1998. As a result of all these facts, the Respondent No. 2 has filed the false and frivolous complaint against the petitioner.

5.In support of his submissions, Mr. Naik relied on several judicial pronouncements. He relied on the decision of Hon'ble Supreme Court in the case of **Rajendra Kumar Sitaram Pande and Ors., vs. Uttam and Anr., reported in AIR 1999 SC 1028**, wherein Hon'ble Supreme Court has taken a view that the complaint alleging that accused made false imputations against complainant by reporting to his Superior Officer that he had abused to Treasury Officer in a drunken state. In that case complainant found guilty in a departmental inquiry pursuant to accused's complaint. In this view of the matter, the Court has taken the view that the allegations

in complaint of accused are covered by Exception 8 to Section 499 of Penal Code. The Court has held that by perusing the allegations in the complaint, no case of defamation was made out and hence requiring the accused persons to face trial or even to approach the Magistrate afresh for reconsideration of the question of issuance of process would not be in the interest of justice. The criminal proceedings were, therefore, quashed.

6.In the case of **Ayesha Bi vs., Peerkhan Sahib and Ors., reported in 1954 Cri.L.J. 1239 (Madras)**, wherein while quashing the complaint the Court has held that the Ninth Exception to Section 499 of I.P.C. affords protection when a defamatory statement is made in good faith for the protection of the interests of the person making it. The exception covers not only such allegations of fact as could be proved true but

also expressions of opinion and personal inferences. It is further held that in good faith, an essential ingredient is honesty of purpose. The accused must firstly, honestly believe his imputation to be true, and, secondly, he must honestly make it from a sense of duty to himself. He must not exaggerate or say unnecessary things. He must not make his duty the cover for spreading the libel. The question for enquiry in such cases will be whether the accused had reasonable grounds for believing the imputations to be true and for believing that it was necessary for his safety to give publicity to them.

7. Mr. Naik has further relied on the decision of Patna High Court in the case of **Sardar Amar Singh vs., K.S. Badalia, reported in 1965 (2)Cri. L.J. 693**, wherein the respondent wrote a letter to the President of the Managing

Committee of Takht Harmandirji, Patna City, stating that the funds of the Gurudwara were being utilised by the Law Agent and a member of the Supervising Committee for their own purpose and the accounts of the Gurudwara should be carefully checked. The Court held that it was open to the President who had lawful authority over them to get the accounts checked after this matter was brought to his notice and the allegation by itself could not be said to be defamatory.

8.Mr. Naik has relied on the decision of Bombay High Court in the case of **Vinod Dattatray Samel vs., Ravjibhai M. Patel & Ors., reported in 1993 Cr.L.R. (Mah.) 651**, wherein the Court took note of the fact that the complainant was an employee and the accused were his employers. The accused were in a position of authority and were entitled to comment on the conduct of

complainant as long as the same was done bona fide and in good faith. The Court held that the imputation was made for protection on interest of the company. The imputations were made before a Court which was seized with the disputes in regard to the termination of the services of the complainant. The imputations were made in good faith and were made before a Judge for the purpose of justifying the order of termination. The accused, therefore, would be covered by exceptions 7, 8 and 9 of Section 499 IPC and will, therefore, not be guilty of the offence of defamation punishable under Section 500 of the I.P.C.

9.Mr. Naik has further relied on the decision of **Chaitan Charan Das, vs. Raghunath Singh, reported in AIR 1959 ORISSA 141**, wherein it is held that the essence of the offence of defamation, as given in Section 499 is that the

imputation must have been made either with the intention of causing harm, or knowing or having reason to believe that such imputation would cause harm to a person. The Court has further held that in judging whether the accused had such intention or knowledge the circumstances under which and the main object with which the application containing the defamatory statements was sent including the prayer asked for from the Minister, and the background of the dispute between the parties before the Endowment Department, should all be considered. If, after a careful consideration of all these facts it did not appear that the accused had the necessary intention or knowledge it was not proper to place him on trial for an offence under Section 500, Penal Code. The Court further held that where some passages in a petition are alleged to be defamatory, the document should be read as a whole, with a view

to find out the main purport, and too much importance should not be attached to a few isolated passages here and there.

10.Based on the aforesaid judgments of Hon'ble Supreme Court as well as different High Courts Mr. Naik has urged that the averments and allegations made in the affidavit in reply would not amount to defamation as they are made during the proceedings of Company Application No. 364 of 1998 pending before this Court and since the respondent No. 2 has made all sorts of allegations against the T.L.A. and other workers, and it is only with a view to bring true facts before the Court, the said affidavit was filed. Ultimately, on the basis of the said affidavit, the application moved by the respondent No.2 before this Court was rejected. He has, therefore, submitted that the said averments cannot be treated as defamatory

causing any injury to the reputation of the Respondent No. 2 and the same are straightaway covered by Exception 7, 8 and 9 of Section 499 of the I.P.C. In this view of the matter, the complaint filed by the Respondent No. 2 before the Metropolitan Magistrate, Court No. 5 at Ahmedabad is required to be quashed and set aside.

11.Mr. Prakash Kanubhai Shah – respondent No.2 appearing as Party-in-person has strongly urged that he has filed an Company Application No. 364 of 1998 before this Court only with a view to draw attention of the Court that certain irregularities are committed on large scale wherein the Official Liquidator as well as office bearers of T.L.A., were involved. He has further submitted that delivery of the goods of the Company in liquidation made in the presence of the petitioner and despite this

fact, false allegations were made against the Respondent No. 2 in the affidavit in reply. He has, therefore, filed complaint before the Metropolitan Magistrate. He has further submitted that the complaint is filed in the year 1999 and the complaint is pending at the stage of evidence and in this view of the matter, this Court should not interfere while exercising powers under Section 482 of the Criminal Procedure.

12.Mr. H.L. Jani, learned APP has submitted that the complaint prima facie discusses the offence under Section 500 of Indian Penal Code and since the matter is at the stage of evidence, this Court should not interfere in the matter while exercising its inherent powers under Section 482 of the Criminal Procedure Code.

13.After having heard the learned advocates

appearing for the respective parties and after having gone through the contents of the various proceedings before the Company Court and the orders passed therein as well as the contentions raised by the complainant in the present application and after having considered the authorities cited before the Court, the Court is of the view that there is no defamation as alleged by the complainant in the complaint. If the entire affidavit is read as a whole, it mainly contains the denials of the facts stated by the respondent No.2 in his complaint. Since certain allegations were made against the office bearers of the T.L.A. and other workers, only with a view to bring the correct facts of the case before the Court affidavit-in-reply was filed. In any case, in judicial proceeding certain facts are stated on oath and in the interest of T.L.A. And all other workers. Moreover, the said averments

were made in good faith and without any malice. This Court is the proper forum where the proceedings are pending and ultimately, the Company Application No. 364 of 1998 filed by the Respondent No. 2 was rejected by this Court. The alleged averments and allegations in the affidavit-in-reply are, therefore, covered by the exceptions 7,8,9 to S. 499 and hence, no case is made out for defamation punishable under Section 500 of I.P.C.

14.Looking to the authorities relied upon by Mr. Naik, it appears that the petitioner's case is squarely covered by Exception 7, 8 and 9 of Section 499 of the Criminal Procedure Code and since the complaint does not disclose any offence against the present petitioner there is no need to send the petitioner to face the trial, as it would amount to travesty of justice. When submissions are made in good

faith without any malicious motive, the person should not be sent to face criminal trial.

15.Looking to the overall facts and circumstances of the case and considering the relevant law on the subject, the Court is of the view that the complaint filed by the respondent No.2 does not disclose any offence Punishable under Section 500 of I.P.C., against the present petitioner and complaint is accordingly quashed and set aside. Rule is made absolute without any order as to costs.

kks **[K. A. PUJ, J.]**